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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	MD Docket No. 98-36
Assessment and Collection Of	)	
Regulatory Fees For	)	
Fiscal Year 1998	)	

To: The Commission

COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION

Columbia Communications Corporation ("Columbia"), by counsel, hereby comments concerning the Notice of Proposed Rulemaking in the above-captioned docket ("NPRM").[1] These comments focus on three issues. First, with respect to the fee proposed for geostationary satellites, Columbia believes that the Commission has once again failed to satisfy the statutory requirement that it set fees based upon the benefit accorded to the payors by the FCC's regulatory efforts. There is no discernible correlation between the very high $119,000 per geostationary satellite fee that the Commission proposes and the relatively small actual costs of the FCC's regulatory activities relating to operational C- and Ku-band satellite systems in geosynchronous orbit.

Second, Columbia objects to the Commission's failure to account for disparities in transponder capacity that exist among different satellites. Based on these

[1] *See Assessment and Collection of Regulatory Fees For Fiscal Year 1998*, FCC 98-40, slip op. (released March 25, 1998).

differences, and the resulting differences in licensee's ability to collect revenue, the Commission should assess fees based on the number of 36 MHz equivalent circuits on each satellite rather than charging a one-size-fits-all fee for all geostationary satellites.

Third, despite objections raised last fall in connection with regulatory fee payments for 1997, the Commission has once again proposed to extend to non-common carriers fees for international bearer circuits imposed by statute on common carriers alone. Because the Commission cannot alter the definitions contained in the statute, collection of these fees from private carriers is unlawful.

I. The Regulatory Fee Proposed For Geostationary Space Stations Is Unreasonably High And Should Be Adjusted To Reflect The Actual Costs Associated With FCC Regulation Of These Licensees.

Congress has mandated through Section 9 of the Communications Act that the Commission assess and collect regulatory fees upon licensees and other regulated entities which arise from the agency's "enforcement activities, policy and rulemaking activities, user information services and international activities." 47 U.S.C. § 159(a). The statute further provides that the fees so derived must be "reasonably related to the benefits provided to the payor" by these activities. 47 U.S.C. § 159(b)(1)(A).

The NPRM is deficient in that the Commission has not provided the public with concrete information concerning which administrative costs are associated with regulation of geostationary fixed-satellite service ("FSS") systems, or how these costs were determined. Indeed, the NPRM lacks any description of how the FCC's cost accounting system functions. Instead, it simply states that the estimated costs for 1998 are $6,145,248 based on an extrapolation from the 1997 "actual costs" of $5,677,889.[2/] There is no information concerning how this latter figure was obtained. More information is clearly required to provide commenters with the means to determine where the Commission has erred in its attribution of costs to satellite services.

In the absence of such information, it is nonetheless evident that the methodology that the Commission has used is defective in critical respects because the proposed geostationary space station fee is not consistent with any rational measure of the actual administrative costs attributable to regulating existing geostationary FSS licensees. The FCC's decision to assess a fee of $119,000 on geostationary space stations, an increase of more than 20% over the 1997 fee ($97,975), is simply not reasonable.

One probable deficiency may be that the figures used ascribe to all geostationary satellite operators those rulemaking and international activities that actually benefit those seeking to offer new space-based services, activities which are neither covered by other Commission fees[3/] nor attributable to ongoing regulation of existing licensees.[4/] Rulemaking costs associated with the establishment of new satellite services

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[2/] *See* NPRM, FCC 98-40, slip op. at 43b (Attachment D).

[3/] As Columbia has pointed out on prior occasions, the costs associated with satellite application processing and international coordination activities are already covered by the Commission's sizable application fees. *See, e.g.*, Columbia Reply Comments, MD Dkt. No 96-186, at 3 n.1 (filed April 4, 1997).

[4/] Ongoing regulation of satellite operators does not consume a significant share of (continued...)

cannot fairly be imputed to operators of existing geostationary FSS systems. In effect, such an approach would assess companies a tax in order to promote the advent of new competitors to their existing services.

Given the fact that substantial FCC resources have been expended in the past year on rulemakings related to new geostationary and non-geostationary satellite applications for the Ka- and V-bands, it seems likely that these costs have been inappropriately assessed against existing licensees, rather than defrayed as overhead to be charged to licensees in all FCC-regulated services (or eliminated from the Commission's fee calculations). Accordingly, the Commission should reevaluate the outlays directly associated with geostationary space station licensees and correct the fee to be charged per satellite so that it comports with the mandate of Section 9 that fees be reasonably related to the benefits conferred on the payor.

II. The Commission Should Adjust Its Fee Collection Methodology To Take Into Account The Transponder Capacity of Each Satellite.

In addition to adjusting its method of calculating the revenues to be collected from satellite licensees, the Commission should also modify its approach to collecting these fees from these licensees. Not all satellites are identical, and the

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[4](...continued)

Commission resources in that space station licensees are subject to few regulatory requirements, the Commission only rarely becomes involved directly in coordination issues, and changes in the rules applicable to existing operators are rarely proposed (*i.e.*, as noted above, most satellite rulemakings deal with new services).

Commission's regulatory fee ought to take into account the great differences in transponder and bandwidth capacity that exist among different spacecraft. For example, Columbia's capacity on its TDRS satellites is limited to just twelve C-band transponders, which is only about one-third the capacity of the typical geostationary satellite.[5/] For this reason, Columbia has long challenged the current structure's identical treatment of all satellites, and the consequent disproportionate impact upon operators of facilities with smaller capacities, such as Columbia.

While the actual cost of regulation attributable to any licensee varies from year to year, each operator benefits from the Commission's regulatory role in sustaining the industry in close proportion to its capacity. Many space stations carry full arrays of both C-band and Ku-band transponders with full frequency reuse in each band, totaling up to forty-eight 36 MHz-equivalent transponders. On the other hand, "lightsats" may have only twelve 36 MHz-equivalent transponders per satellite. The number of transponders or transponder-equivalent units governs the number of customers that a licensee can serve, and in turn, dictates its ability to generate income.[6/]

The assessment of regulatory fees based solely on the holding of an FCC authorization, regardless of the nature of the facility licensed, also runs squarely counter

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5/ Columbia's TDRS authorizations do not give it the authority to operate an entire satellite, but merely the commercial C-band communications package included on these spacecraft when they were designed in the late 1970s.

6/ Just as significantly from a regulatory perspective, dual-frequency-band satellites with large payloads require substantially more extensive FCC engineering review.

to the approach that the Commission has taken with other services. In the mass media area, for example, broadcast stations are not charged identical fees; instead, fees vary according to a scale, *e.g.*, fees for radio stations are based on the power of the station and its resulting population coverage.[7/] These factors correlate directly with the revenue generating capability of the facility.

There is no justification for not introducing a similar level of fairness into the fee payment schedule for satellite service providers, so that the fee correlates with each licensee's individual ability to generate income through utilization of its FCC-authorized facilities. Indeed, as noted above, the Act requires that fees be ". . . adjusted to take into account factors that are ***reasonably related to the benefits provided to the payor of the fee*** by the Commission's activities. . " 47 U.S.C. § 159(b)(1)(A) (emphasis added). Because the number of transponders or transponder-equivalent units per satellite is both easily calculable and approximates the regulatory benefit that accrues to the licensee, Columbia again urges the Commission to use this figure in assessing geostationary satellite regulatory fees.[8/]

Columbia's proposal to base fees on each satellite's capacity is no more complex than charging fees based on the number of stations alone. At the same time, it is dramatically more efficient in placing the monetary costs of regulation where they

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7/ *See* NPRM, FCC 98-40, slip op. at 8-9 (¶ 21)and Attachment F.

8/ The most reasonable approach would appear to be basing the fees upon the number of 36 MHz equivalent circuits used by the licensee.

belong. In addition to the other benefits identified herein, by adjusting statutory fees required to be paid to a level commensurate with actual capacity, the Commission will promote regulatory parity, fairness to small businesses, and the Commission's policy favoring intramodal competition.

Accordingly, the Commission should proceed in a manner which fulfills the statute's over-arching goal of placing the costs of regulation on the regulated entities responsible for these costs, and should base its space station fees on the transponder capacity of each satellite measured in 36 MHz equivalent circuits. It is only fair and reasonable for those companies that are dominant players in the satellite industry to pay their proportionate share of the cost of regulating the industry.

III. The Commission Must Limit Its International Bearer Circuit Fee To Common Carriers, As Provided By Statute.

The Commission has also erred in extending its international bearer circuit fees to non-common carriers. Section 9(g) of the Communications Act specifically provides that fees based on international bearer circuits are to be assessed against "carriers." Elsewhere, the Act defines "carriers" as "common carriers."[9/] Thus, expanding the class of entities subject to this fee beyond common carriers is inconsistent with the statute.

[9/] *See* 47 U.S.C. § 153(10).

The distinction is not merely one of semantics, but is rooted in the practical realities of the FCC's regulatory regime. The FCC is charged with imposing fees premised on these regulatory services. Because common carriers are closely regulated by the Commission under Title II, they are a source of significant administrative costs for the agency. By contrast, the FCC does not regulate non-common-carriers in the same manner, and thus must not impose fees meant to cover the costs of common carrier regulation upon entities that are not subject to such regulation.

As a legal matter, the Commission itself lacks the power to alter the definition of the fee category, or to create a new one applicable to non-common-carriers, absent a change in its regulation of these entities or a change in the Act.[10/] There has been no such change that would justify imposing new fees on non-common carriers. Indeed, the prevailing trend in this area is deregulatory.

Morever, to add insult to injury, the international bearer circuit fee was extended to non-common carriers at the suggestion of Comsat,[11/] which despite its access to the largest fleet of satellites in the world, is not required to pay the high fees applicable to geostationary space stations, or any other fees to cover the costs of the Commission's extensive oversight of its activities as a government-sanctioned monopoly and Signatory to INTELSAT and Inmarsat. As discussed above, operators of satellite space segment capacity are subject to the separate, very substantial, and overly burdensome fee on a per

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10/ *See* Comsat Corp. v. FCC, 114 F.3d 223, 227 (D.C. Cir. 1997).

11/ *See* Comsat Comments, MD Dkt. No. 96-186, at 10-12 (filed March 25, 1997).

space station basis which common carriers are not required to pay. To impose both the space station and common carrier fees upon private satellite carriers, and only the common carrier/bearer circuit fee on Comsat is grossly inequitable, imposing dramatically higher fees on private carriers than is warranted, while substantially undercharging Comsat. In effect, private industry is subsidizing Comsat. This imbalance must be addressed by the Commission in its final order.

IV. Conclusion

For the foregoing reasons, the Commission should adjust downward the annual regulatory fee to be paid for geostationary FSS space stations, so that it more accurately reflects the true costs attributable to these operators. In addition, in order to establish a fair approach to fee collection, the Commission should base its space station fees on the transponder capacity of each satellite measured in 36 MHz equivalent circuits. Finally, the Commission should abandon its efforts to collect from private carriers international bearer circuit fees that are mandated by statute for common carriers only.

Respectfully submitted,

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